

by the same number of copies required to be filed with the pleading to which the reply or motion is addressed.

(c) *Reply to a Reply.* A reply to a reply is not permitted.

[47 FR 49554, Nov. 1, 1982, as amended at 61 FR 52711, Oct. 8, 1996]

#### **§ 1104.14 Protective orders to maintain confidentiality.**

(a) *Segregation of confidential material.* A party submitting materials which it believes are entitled to be kept confidential and not made part of the public docket should submit these materials as a separate package, clearly marked on the outside "Confidential materials subject to a request for a protective order."

(b) *Requests for protective orders.* A request that materials submitted to the Board be kept confidential should be submitted as a separate pleading and clearly headed "Motion for protective order."

[48 FR 44827, Sept. 30, 1983, as amended at 61 FR 52711, Oct. 8, 1996]

#### **§ 1104.15 Certification of eligibility for Federal benefits under 21 U.S.C. 853a.**

(a) An individual who is applying in his or her name for a certificate, license or permit to operate as a rail carrier must complete the certification set forth in paragraph (b) of this section. This certification is required if the transferee in a finance proceeding under 49 U.S.C. 11323 and 11324 is an individual. The certification also is required if an individual applies for authorization to acquire, to construct, to extend, or to operate a rail line.

(b) Certification:

I \_\_\_\_\_ (Name) \_\_\_\_\_, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or State offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal Benefits, either by court order or by operation of law, pursuant to 21 U.S.C. 853a.

[54 FR 48250, Nov. 22, 1989, as amended at 61 FR 52711, Oct. 8, 1996]

### **PART 1105—PROCEDURES FOR IMPLEMENTATION OF ENVIRONMENTAL LAWS**

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AUTHORITY: 5 U.S.C. 553 and 559; 16 U.S.C. 470f, 1451, and 1531; 42 U.S.C. 4332 and 6362(b); and 49 U.S.C. 701 note (1995) (section 204 of the ICC Termination Act of 1995), 721 (a) 10502, and 10903-10905.

SOURCE: 56 FR 36105, July 31, 1991, unless otherwise noted.

#### **§ 1105.1 Purpose.**

These rules are designed to assure adequate consideration of environmental and energy factors in the Board's decisionmaking process pursuant to the National Environmental Policy Act, 42 U.S.C. 4332; the Energy Policy and Conservation Act, 42 U.S.C. 6362(b); and related laws, including the National Historic Preservation Act, 16 U.S.C. 470f, the Coastal Zone Management Act, 16 U.S.C. 1451, and the Endangered Species Act, 16 U.S.C. 1531.

#### **§ 1105.2 Responsibility for administration of these rules.**

The Director of the Office of Economics shall have general responsibility for the overall management and functioning of the Section of Energy and Environment. The Director is delegated the authority to sign, on behalf of the Board, memoranda of agreement entered into pursuant to 36 CFR 800.5(e)(4) regarding historic preservation matters. The Chief of the Section of Energy and Environment is responsible for the preparation of documents under these rules and is delegated the authority to provide interpretations of the Board's NEPA process, to render

initial decisions on requests for waiver or modification of any of these rules for individual proceedings, and to recommend rejection of environmental reports not in compliance with these rules. This delegated authority shall be used only in a manner consistent with Board policy. The Director may further delegate procedural authority to the Chief of the Section of Energy and Environment as appropriate. Appeals to the Board will be available as a matter of right.

#### § 1105.3 Information and assistance.

Information and assistance regarding the rules and the Board's environmental and historic review process is available from the Section of Energy and Environment, Surface Transportation Board, 12th & Constitution Ave. NW., Washington, DC 20423, telephone: 202-927-6211.

[56 FR 36105, July 31, 1991, as amended at 58 FR 44619, Aug. 24, 1993]

#### § 1105.4 Definitions.

In addition to the definitions contained in the regulations of the Council on Environmental Quality (40 CFR part 1508), the following definitions apply to these regulations:

(a) *Act* means the Interstate Commerce Act, Subtitle IV of Title 49, U.S. Code, as amended.

(b) *Applicant* means any person or entity seeking Board action, whether by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

(c) *Board* means the Surface Transportation Board.

(d) *Environmental Assessment* or "EA" means a concise public document for which the Board is responsible that contains sufficient information for determining whether to prepare an Environmental Impact Statement or to make a finding of no significant environmental impact.

(e) *Environmental documentation* means either an Environmental Impact Statement or an Environmental Assessment.

(f) *Environmental Impact Statement* or "EIS" means the detailed written statement required by the National Environmental Policy Act, 42 U.S.C. 4332(2)(c), for a major Federal action

significantly affecting the quality of the human environment.

(g) *Environmental Report* means a document filed by the applicant(s) that:

(1) Provides notice of the proposed action; and

(2) Evaluates its environmental impacts and any reasonable alternatives to the action. An environmental report may be in the form of a proposed draft Environmental Assessment or proposed draft Environmental Impact Statement.

(h) *Filing* means any request for STB authority, whether by application, petition, notice of exemption, or any other means that initiates a formal Board proceeding.

(i) *Section of Energy and Environment* or "SEE" means the Section that prepares the Board's environmental documents and analyses.

(j) *Third-Party Consultant* means an independent contractor, utilized by the applicant, who works with SEE's approval and under SEE's direction to prepare any necessary environmental documentation. The third party consultant must act on behalf of the Board. The railroad may participate in the selection process, as well as in the subsequent preparation of environmental documents. However, to avoid any impermissible conflict of interest (i.e., essentially any financial or other interest in the outcome of the railroad-sponsored project), the railroad may not be responsible for the selection or control of independent contractors.

#### § 1105.5 Determinative criteria.

(a) In determining whether a "major Federal action" (as that term is defined by the Council on Environmental Quality in 40 CFR 1508.18) has the potential to affect significantly the quality of the human environment, the Board is guided by the definition of "significantly" at 40 CFR 1508.27.

(b) A finding that a service or transaction is not within the STB's jurisdiction does not require an environmental analysis under the National Environmental Policy Act or historic review under the National Historic Preservation Act.

(c) The environmental laws are not triggered where the STB's action is